Supreme Court of the United States

OCTOBER TERM, 1965

No. 940

JOSEPH A. RINALDI, APPELLANT

vs.

HOWARD YEAGER, WARDEN, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action Docket No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

vs.

HOWARD YEAGER, Warden, A.L. DEMPSKY, Business Manager, N.J. State Prison, Trenton, N.J. and HARRY LERNER, Essex County Treasurer. DEFENDANT(S)

COMPLAINT FOR INJUNCTION AND DECLARATORY JUDGMENT. Filed January 24, 1964

TO: THE HONORABLE JUSTICES, AND ASSOCIATES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NEWARK, NEW JERSEY.

COMES NOW, Joseph A. Rinaldi, complaining of Howard Yeager, as Warden of the New Jersey State Prison at Trenton, New Jersey, A. L. Dempsky, Business Manager of the State Prison Accounts, and Harry Lerner, Essex County Treasurer, said defendant(s) in the above listed cause of action and complains as follows:

I

That the complainant herein is a citizen, resident and person of the United States of America and that he is now and has been an inmate of the New Jersey State Prison. At present complainant is confined to the annex of the Prison in Rahway, New Jersey, viz, Rahway Prison Farm.

II

Plaintiff is being denied the right to Due Process of the laws and being further subject to Cruel and Unusual punishment in violation to the Seventh, Eighth and Fourteenth Amendments of the United States Constitution and various citations of the laws of the land incorporated in the substance of this application, and to the best of Plaintiff's lay knowledge there are no other cause or pretence for this complaint.

[fol. 2]

STATEMENT OF FACTS

Plaintiff, Joseph A. Rinaldi, has been convicted by way of trial by jury in a criminal action in the Superior Court of New Jersey, in and for the County of Essex, Newark, New Jersey. Subsequently and by law, an appeal was taken to the Superior Court, Appellate Division, and that the Plaintiff mentioned in this Complaint appealed in Forma Pauperis.

The Appellate Division of the Superior Court granted Leave to Appeal as an indigent person, and ordered that a copy of the trial transcript be made for the aid and preparation of briefs on appeal.

A copy of the Trial Transcript was *loaned* to the appellant and thereafter returned to the Essex County Clerks Office as ordered.

On date of November 13th 1963 A.D. Plaintiff received a copy of Institutional Correspondence from the Business Office, aprising him that the payment of said transcript would be deducted from his institutional earnings and forwarded to the Essex County Treasurer.

Copy of Notice appended, (A-1).

The Garnishment is presently in effect and the *full amount* of earnings of the Plaintiff are being deducted and forwarded to the Essex County Treasurer, pursuant to *N.J.S. 2A:157-18.* which will be more clearly elaborated on further herein, for this Honorable Courts convenience and proper consideration.

Let this Honorable Court please note, that the Plaintiff was only once notified of this Garnishment as mentioned

supra, in strict conflict to the Constitutional mandates governing Civil Action and July Trial, as will be further expressed herein.

ARGUMENT

PLAINTIFF IS BEING SUBJECT TO CRUEL AND UNUSUAL PUNISHMENT AND A STRICT DENIAL OF DUE PROCESS OF THE LAWS. IN VIOLATION AND CONFLICT TO THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

POINT I

PLAINTIFF IS BEING SUBJECT TO GARNISHMENT OF HIS FULL WAGES SUFFERING THE DENIAL OF THE RIGHT TO FURTHER LITIGATION, MANY PERSONAL NEEDS, A DENIAL OF DUE PROCESS AND DISCRIMINATION.

[fol. 3] The Eighth Amendment of the United States Constitution; guarantees that:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

Plaintiff alleges and contends that due to the Garnishment *per se* he is being subject to cruel and unusual punishment, wherefore the plaintiff works to the very best of his ability doing his job and duties while confined and yet at the end of the month, when the full population of the said Institution is paid for services rendered, his (plaintiff's) pay is garnished for the payment of said transcript, which is not for the purchase of the same but only for the temporary use during the preparation of briefs on appeal. That at this time the said transcript being paid for by the plaintiff is not in his possession or use and has long been before this date returned to the Essex County Clerk.

Plaintiff alleges and contends that due to the unconstitutional garnishment of his hard-earned wages he is without many personal needs such as listed herein:

1. Paper and facilities to prepare legal actions concerning Habeas Corpus and his possible release and or whatever other litigation or mailing services are required, such as stamps, typewriter ribbons, literature, law reports pertinent to his cause, and that all the above listed as well as more, that has to be supplied by the inmates own personal means, i.e. wages from their institutional employment. To enlighten the Court further, and not to lengthen this contention, let it be noted that plaintiff as well as the population of other inmates, must buy through their own monies all personal paper and items listed, that the authorities of this institution will not supply any indigent with the same, except for food, bedding, clothing, and essentials.

2. Set aside the needs of the plaintiff pertaining to litigation and further consider the personal needs, such as, toilet articles, cigarettes and tobacco, extra food from the inmate commissary, stamps and paper and means of correspondence that will better his education and future, which can be well elaborated on and amount to a lengthly brief in itself.

3. Further pointed out, that Law Reports, Books of Procedure and Law cannot be obtained through any means of this institution nor thorugh the State Libray system. That in the Institution Library there is not one listed law book for the aid of your plaintiff nor any other inmate of said institution. The many applications for freedom and manifest injustice made in the past are solely through the personal
[fol. 4] means of each and every applicant and not with the aid of the institution, authorities or associates.

Let it be noted at this point, that plaintiff is presently involved in litigation in the courts, concerning his conviction as far as the United States Supreme Court. That from this unconstitutional garnishment of wages, plaintiff's litigation will become moot without the monies and facilities to continue. Let it be noted, that if the State, County, or institutional authorities wish to garnishee the wages of your plaintiff, then an Order be granted that all needs, personal and otherwise be afforded the plaintiff through the full course of this garnishment.

The institutional rule is, that any inmate who works will not receive any toilet articles or tobacco nor any other items that are afforded an inmate who does not work. In this case, although the plaintiff works, some, five days a week, he is not allowed tobacco, toliet articles such as razor blades, writing paper, stamps, paper, and facillities for litigation in the Courts.

Let it be noted further at this point, that the paper which this Complaint is typewritten on has been borrowed from another inmate who is more fortunate than your plaintiff, and further that the institutional rules are that no inmate will borrow or lend to another, anything whatsoever, including his typewriter and facilities, unless complied with, discplinary action will be had, and punishment administered.

Due to the small and few facts alleged *supra*, plaintiff herein is being subject to "cruel and unusual punishment", contrary to the guarantee of the Eighth Amendment of our United States Constitution, an inherent right to all citizens of our United States of America.

The Court will find from the oral hearing of this cause that plaintiff can and will submit more parol and documentry proof of the unconstitutional acts alleged, and not to lengthen this Complaint nor burden this Honorable Court has listed the same to a minimum praying to suffice so that summons will issue to the defendant(s) and the relief in quest be granted and the defendant(s) [fol. 5] be restrained until final decree of this Honorable Court.

CONSTITUTIONAL LAW

The Eighth Amendments guarantee against cruel and unusual punishment is applicable through the due process clause of the Fourteenth Amendment. U.S.C.A. Const. Amends, 8, 14.

CIVIL RIGHTS

Federal remedy of an action under the Civil Rights act is supplementry to a State remedy and need not be first sought and refused before the Federal one is invoked. 42 U.S.C.A. § 1983.

CIVIL RIGHTS OF CONVICTS

> A prisoner duly convicted and incarcerated in a penitentiary does not thereby suffer the loss of all his Civil Rights, and such a prisoner may invoke provisions of the Civil Rights Act. 42 U.S.C.A. § 1983

Plaintiff, therefore appears before the bar in due form and procedural manner, pursuant to the laws guaranteed by the Civil Rights Act. Plaintiff further moves to this Courts consideration and decree under jurisdictional right pursuant as follows in the doctrine of *Ortega* vs. *Ragen*, 216 F. 2d 561 (7th. Cir., 1954):

> 'The *Ortega* case holds in part, that a Federal District Court has jurisdiction of actions arising under the Civil Rights act, 42 U.S.C.A. §§ 1981-1955, without regard to either diversity of citizenship or the requisite dollar amount."

Plaintiff further relies on the late Federal precedent of *Robinsion* vs. *California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed. 2d 753 (1962). Wherein the Eighth Amendments guarantee against cruel and unusual punishment was applied through the due process clause of the Fourteenth Amendment.

Plaintiff need not cause burden to this Honorable Court relying on the knowledge and experience of law therein, and therefore will not submit lengthy citations concerning the requirements of law and precedent bringing this cause before the Court as a Court of Competent Jurisdiction, and states the main facts sworn to as meritorious, so that a temporary injunction issue, and summons of the defendant(s) be had for the oral hearing of this cause.

Please let the Court note, although an indigent person has right to appeal or submit actions concerning his de-
[fol. 6] tention and confinement, the needs and facilities to procure the same must be at hand. As said *supra*, and not to be repetitious, this institution will not and does not supply any of the important needs to one seeking relief by way of legal remedy in the courts. Although (will this Honorable Court) there is a secluded room out of the reach of inmates confined herein, where an old but suita-

ble library of law books are stored for no apparent good reason. Last stating in this point that elaboration will be made upon the formal hearing of this cause.

POINT II

AS A FURTHER VIOLATION OF THE CIVIL RIGHTS ACT, PLAINTIF IS BEING SUBJECT TO DISCRIMINATION IN THIS UNLAWFUL GARNISHMENT OF WAGES.

Pursuant to N.J.S. 2A:152-17, as follows:

> Where each person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings of the trial court are needed therefore he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof may certify the expense and amount thereof to the County Treasurer who shall thereupon pay such expense. L. 1956 c134 p. 555 Section 1.

As stated in the Statutory enactment supra, Plaintiff appealed accordingly and was granted the transcript, however, *only for the use of a thirty-day period.* Should he therefore be subject to garnishment for property not in his possession or ownership?

Further, N.J.S. 2A: 152-18, states as follows:

> The County Treasurer shall file a notice of said payment and the amount thereof with the institution of which said person, upon whose application the transcript of the record was prepared, and to the extent of the expense incurred, the County Treasurer shall be reimbused from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L. 1956 c134 p. 555 Section 2.

at this point, plaintiff will submit as pointed out *supra*, where the discrimination takes effect.

[fol. 7] It will be interesting to note, from a clear examination of the records, throughout the many thousand

of appeals by indigent persons so confined, very few prisoners have made payment for the transcripts as in the case at bar. Moreso the amount at this time seems to be under ten. Let it also be noted that as stated in the facts of the Complaint, the plaintiff herein has been convicted in the Essex County Court, and a clear viewing of the records will prove that the plaintiff now before the bar is being discriminated against to a great extent, for if the statutory provisions were carried out from the time of enactment, every person appealing their conviction comes under the supervision of the same. Why then should not all those who have lost their appeals also be subject to the garnishment?

This is not the means of your plaintiff to appear before the bar for consideration, for plaintiff does not want to cause harm to others, moreover plaintiff wishes to point out with great emphasis the discrimination involved, thereby invoking the Civil Rights Act, and Constitutional protection, as being meritorious in this cause of action.

POINT III

PLAINTIFF WAS DENIED THE RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS COUPLED WITH THE SEVENTH ARTICLE OF THE UNITED STATES CONSTITUTION.

Plaintiff contends as an addition to his complaint, that pursuant to the provisions of Article Seven of the United States Constitution he was further denied due process of the law, guaranteed by the United States Constitution, Amendment Fourteen.

Article Seven of the United States Constitution provides as follows:

> "In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

It is also similarly provided in the New Jersey Constitution Article Nine, that all Civil Action be tried by Jury.

[fol. 8] Therefore in this case, it should be conceded that the plaintiff is being further subject to prejudice without due process of law, as provided by both Constitutions *supra*, that either the Statutes enacted by Legislature should be declared void as conflicting to the Constitutional provisions or that the provisions of the Constitution be awarded in all civil causes and therefore have been denied to the Plaintiff in this action.

It is also contended that the Plaintiff has been denied due process pursuant to the rules of garnishment, for he has neither been summoned before the bar or heard in this cause prior to the garnishment being made. Pursuant to Civil Procedure in New Jersey as well as Federal Courts, the same has been completely disregarded, and if granted prior to this garnishment, Plaintiff would have not been subject to the cruel and unusual punishments being inadvertedly inflicted upon him.

As a last statement in view of the garnishment laws, even if allowed by a Court of competent jurisdiction the full amount of earning would by no means be garnisheed, moreover a percentage decreed by the Court wherein the cause was heard.

Again plaintiff does not fully argue against the garnishment, if due to the same, the institution or the County will duly allow all the facilities needed to perfect litigation, not to point out the many items needed, and also to allow the plaintiff the same means of purchasing from the inmates store, as other inmates do from earnings made in the institution.

A question to the Court at this time is, "Should not the Comittment be regarded in full force?", that each and every inmate be confined *without costs.*

Are the Federal Courts aware of the facts herein submitted, that one seeking redress of his conviction as an indigent person, is without the proper materials and facillities very well needed, without any legal material whatsoever, literature, paper, etc.?

Are the Courts also aware that a convict attempting to gain his freedom by the way of right, must sell his [fol. 9] blood, to gain a few extra dollars for the proper facilities . . . must work at a job for twenty-cents a day . . . eight hours a day, forty-hours per week and then be

subject to the garnishment of his *full* wages to pay for the transcript of his trial, *not to have possession of that he is paying for, but only borrow the same for a period of thirty days.*

Please be it noted, that an indigent person with a meritorious complaint makes his contention known to the Courts, and is answered to present his claim or action pursuant to the rules of the Court. The book entitled Rules of the Supreme Court of New Jersey costs twelve-dollars, the indigent person confined makes four-dollars per month. A law report costs one-dollar, a ream of paper costs over one-dollar & fifty-cents, a ribbon for a typewriter (if he is fortunate enough to have one) costs over a dollar, and not to mention the various prices of other essential items such as postage stamps, soap, razor blades, toothpaste, etc.

For the respect of this Honorable Court, Plaintiff does not continue with the many detailed facts of great prejudice that can be submitted for consideration and therefore pray that the relief requested in the following prayer be granted and the plaintiff be brought before the bar to have final disposition of this cause upon further parol hearing and presentation, with the aid of requested counsel to prepare a supplement brief in more apropos manner.

Plaintiff praying for relief under the Eighth and Fourteenth Amendments, prays that this Honorable Courts consideration be broad and elastic in view of the treatment the plaintiff is being subject to, for there can be no doubt that discrimination . . . denial of actions in Courts of law . . . coupled with the hard earned wages being fully and unlawfully taken from the indigent plaintiff, the provisions of both the Eighth and Fourteenth Amendments are well in scope of consideration.

[fol. 10] PRAYER

Plaintiff moves that this Honorable Court upon due and proper consideration, order and adjudge that the defendants herein named desist, cease and stop the unlawful garnishment of plaintiff's hard earned wages thereby causing cruel and unusual punishments to be inflicted. That this be done *pro tempore* with an *Injunction* and

after final hearing by both sides to this action by the Courts decree a *Declaratory Judgment*, and; or whatever this Honorable Court so decrees final and just in this cause, be ordered.

Plaintiff moves this Honorable Court and the associates therein to have summoned before this Honorable Court all parties mentioned as defendant(s) to this action so final and parol evidence can be had for full consideration and decree.

INTERVENTION BY OTHER PARTIES

That leave be granted upon application by any and all other inmates of said penal institution who may so desire to join in this proceeding and participate in and receive the benefits thereof upon such terms and conditions as this Honorable Court may, upon such application deem just and equitable.

CONCLUSION

WHEREFORE: The Plaintiff prays that this Honorable Court grant the relief being sought in good faith.

Respectfully submitted,

/s/ Joseph A. Rinaldi—Plaintiff Pro se

DATED THIS 6th DAY OF JANUARY, A.D. 1964

[fol. 11] EXHIBIT "A-1" TO COMPLAINT

(THIS IS A CERTIFIED TRUE COPY)

N. J. STATE PRISON
CLASSIFICATION DEPARTMENT

DATE: 11/13/63

TO: Mr. A. L. Dempsky
Business Manager
Trenton, N.J.

RE: NAME: Joseph Rinaldi (Rah) NO: 36833 COUNTY: Essex

We have been notified that the prisoner's appeal for relief from his sentence has been denied.

Pursuant to NJS 2A: 157-18 Kindly withold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $215. (Invoice attached).

DONALD C. THOMS
Sr. Classification Officer

(Signed-per M. Rively)

DCT:ks
CC:Inmate

[fol. 12]

[Affidavit as to Complaint and Service Omitted in Printing]

[fol. 13]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANT LERNER—
Filed February 18, 1964

The defendant HARRY LERNER, Essex County Treasurer, by way of Answer to the Complaint of plaintiff says that:

1. The defendant, Harry Lerner, admits that the plaintiff is now and has been an inmate of the New Jersey State Prison, confined to the Rahway Prison Farm.
2. The defendant, Harry Lerner, denies paragraph 2 of the Complaint of the Plaintiff.
3. The defendant, Harry Lerner, admits that plaintiff appealed from his conviction to the New Jersey Superior Court, Appellate Division, and that said appeal was denied.
4. The defendant, Harry Lerner, admits that pursuant to N.J.S.A. 2A:152-18, he notified the institutional authorities of the New Jersey State Prison, to reimburse the County of Essex in the amount of $215.00.
5. The defendant, Harry Lerner, denies each and every other allegation of the Complaint.

[fol. 14]

FIRST SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted, against defendant, Harry Lerner.

SECOND SEPARATE DEFENSE

The act or acts done by the defendant, Harry Lerner, which are complained of by plaintiff in his complaint,

were done by him in his official capacity as Treasurer of the County of Essex, and were done in full compliance with law.

THIRD SEPARATE DEFENSE

Pursuant to 28 U.S.C.A. 2281, this court has no jurisdiction over the subject matter of this action.

FOURTH SEPARATE DEFENSE

Defendant, Harry Lerner, denies that the issues in this cause are proper or substantial questions arising under the constitutions and laws of the United States.

/s/ Nicholas T. Fernicola,
Essex County Counsel,
Attorney for defendant,
Harry Lerner, Essex County
Treasurer

DATED: February 17, 1964

[fol. 14a]

[Acknowledgement of Service (Omitted in Printing)]

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANTS YEAGER AND DEMPSKY—
Filed February 18, 1964

The defendants, Howard Yeager, Warden of New Jersey State Prison, and A. L. Dempsky, Business Manager of New Jersey State Prison, by way of answer to the complaint of plaintiff say that:

FIRST DEFENSE

1. Defendants admit that:

(a) The plaintiff is now and has been an inmate of the New Jersey State Prison, confined to the Rahway Prison Farm;

(b) That plaintiff appealed from his conviction to the New Jersey Superior Court, Appellate Division;

(c) That plaintiff's said appeal to said court was denied;

(d) That pursuant to N.J.S.A. 2A:152-18, upon notice from the Essex County Treasurer, defendants notified plaintiff that his institutional earnings would be withheld to reimburse the County Treasurer in the amount of 215.00.

2. Defendants deny each and every other allegation contained in the complaint.

SECOND DEFENSE

The complaint fails to state a claim against these defendants upon which relief can be granted.

[fol. 16] THIRD DEFENSE

The act or acts done by these defendants, which are complained of by plaintiff in his complaint, were done by them in their official capacity as State officers and were done in compliance with law.

FOURTH DEFENSE

This court has no jurisdiction over the subject matter of this action for the reason that the relief sought by plaintiff should not be granted unless heard and determined by a three judge court as required by 28 U.S.C.A. 2281.

FIFTH DEFENSE

Defendants deny that the matters in controversy in this action are proper or substantial questions arising under the Constitution and laws of the United States.

ARTHUR J. SILLS, ESQ.
Attorney General of New Jersey
Attorney for Defendants
HOWARD YEAGER, Warden and
A. L. DEMPSKY, Business Manager.

By: /s/ Eugene T. Urbaniak, Esq.
Deputy Attorney General
of Counsel
135 West Hanover Street
Trenton, New Jersey

DATED: February 5, 1964.

[fol. 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

PLAINTIFF'S NOTICE OF AND MOTION FOR SUMMARY JUDGMENT—Filed June 29, 1964

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

Attention: Eugene T. Urbaniak, Esquire
Deputy Attorney General

NICHOLAS T. FERNICOLA, ESQUIRE
Essex County Counsel
Hall of Records
Newark, New Jersey

Attention: Louis M. Turco, Esquire

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for plaintiff, will move the United States District Court, Newark, New Jersey, on the 14th day of September, 1964, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment in plaintiff's favor for the relief demanded in the Complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law;

If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, then plaintiff will move the Court, [fol. 18] at the hearing on the motion, to ascertain what material facts are actually and in good faith controverted,

and to make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

In support of this motion plaintiff will rely upon a Stipulation of Facts which will be submitted, agreed to by all parties, and upon such briefs and affidavits as may be filed.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed September 1, 1964

JOSEPH A. RINALDI, of full age, being duly sworn, according to law upon his oath deposes and says:

1. I am the plaintiff in this case and am personally familiar with the matters related in this affidavit. I submit this affidavit in support of plaintiff's motion for Summary Judgment. This affidavit supplements some of the matters covered in the Stipulation of Facts filed in support of this motion.

2. Subsequent to my May, 1960, conviction in the Essex County Court before Judge Ferdinand D. Masucci, my petitions to prosecute an appeal *in forma pauperis* and for a transcript of the testimony and proceedings in the trial Court, were granted. (See Stipulation of Facts.) In November, 1960, I received a copy of that transcript. In December, 1960, while I was in the Essex County Court House testifying as a witness in another matter, I returned that transcript to an appropriate person. I re-

turned that transcript because I had been advised in November, 1960, by the office of the Essex County Clerk [fol. 20] that the law allowed me to retain the transcript for a period of only 30 days.

3. Thereafter, I received a letter dated July 10, 1961, from the Essex County Clerk's office (Ex. A, attached) which advised me to return the transcript in question to that office. That letter stated that:

> "The law allows you to retain this transcript for a period of 30 days only, as stated in the November letter."

I replied to that letter by letter of July 14, 1961, (Ex. B, attached). That letter advised the Essex County Clerk's office that I had returned the transcript in December, 1960, while at the Essex County Court House and that I had been advised by the person to whom I had given that transcript that he would be sure that it would be returned to the correct office.

/s/ Joseph A. Rinaldi
JOSEPH A. RINALDI

Sworn and subscribed
to before me this
day of 28th, August, 1964.

/s/ Herman Jones—#6645
Notary Public of New Jersey
My Commission Expires 5-31-69

[fol. 21] EXHIBIT "A" TO AFFIDAVIT

[SEAL]

ESSEX COUNTY CLERK'S OFFICE
HALL OF RECORDS
Newark 2, New Jersey

NICHOLAS V. CAPUTO
County Clerk

July 10, 1961

Joseph R. Rinaldi
No. 36833
Lock Bag R
Rahway, New Jersey

Re: State of N. J. vs
Joseph Rinaldi

Dear Sir:

It has come to our attention that on November 22, 1960 we sent to you the carbon copy of the transcript of testimony No. 250 filed November 10, 1960 in the above matter, at your request. The law allows you to retain this transcript for a period of thirty days only, as stated in the November letter.

You have not returned the transcript to this office to date and we would appreciate your returning it immediately. Please see that the transcript is returned at once. Thank you.

Very truly yours,

/s/ Nicholas V. Caputo
NICHOLAS V. CAPUTO
County Clerk

eds.

NVC/eds

[fol. 22] EXHIBIT "B" TO AFFIDAVIT

7/14/61

Joseph Rinaldi
Joseph Rinaldi

Business
36833

Mr. Nicholas V. Caputo Esq.
Essex County Clerk's Office
Essex County Court House
Newark, New Jersey

Joseph Rinaldi
Rahway Prison Farm
Rahway, New Jersey

Dear Sir:

I am writing you in regards to your letter dated July 10, 1961. At this time I would like to inform you that I have returned the Transcript, No. 250- to your office personaly in the month of December, 1960.

At that time I was a witness for a defendant on trial in Judge Conklins court, and I returned the said transcript to the sheriffs office where I was being held. I believe it was the third floor. The Chief there said he would make sure your office received the same.

I hope I have not put you through any inconvenience. Hoping that this will answer your letter in question, I remain,

Very Truly Yours,

JOSEPH A. RINALDI

Enc: Fl. #2

[fol. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

REQUEST FOR ADMISSION OF FACTS FROM DEFENDANTS YEAGER AND DEMPSKY—Filed September 3, 1964

TO: EUGENE T. URBANIAK, ESQ.
Attorney for Defendants Yeager
and Dempsky
Deputy Attorney General
State House Annex
Trenton, New Jersey

SIR:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 36, plaintiff requests defendants Yeager and Dempsky, within 10 days after service of this request, to admit for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed, the truth of the following facts:

1. (a) That at a time subsequent to September 1958 Kenneth Hall was tried and convicted of a crime in the Bergen County Court.

(b) That Kenneth Hall appealed this conviction to the Superior Court, Appellate Division (Docket No. A-853-61).

(c) That Kenneth Hall petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition.

[fol. 24] (e) That Kenneth Hall's conviction was affirmed by the Appellate Division (Mandate on Affirmance of May 15, 1963).

(f) That, as of this date, there has been no garnishment of Kenneth Hall's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Kenneth Hall is now an inmate at the New Jersey State Prison pursuant to the aforesaid Bergen County Court conviction.

2. (a) That at a time subsequent to September 1958 Eugene Brett was tried and convicted of a crime in the Bergen County Court.

(b) That Eugene Brett appealed this conviction to the Superior Court, Appellate Division (Docket No. AM-89-61 and A-1029-61).

(c) That Eugene Brett petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of November 19, 1962.

(e) That Eugene Brett's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 19, 1963).

(f) That, as of this date, there has been no garnishment of Eugene Brett's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

[fol. 25] (g) That Eugene Brett is now an inmate at the New Jersey State Prison pursuant to the aforesaid Bergen County Court conviction.

3. (a) That at a time subsequent to September 1958 Harold Sharpe was tried and convicted of a crime in the Atlantic County Court.

(b) That Harold Sharpe appealed this conviction to the Superior Court, Appellate Division (Docket No. AM-244-59 and A-121-60).

(c) That Harold Sharpe petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the

transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of December 28, 1960.

(e) That Harold Sharpe's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 29, 1961).

(f) That no garnishment of Harold Sharpe's institutional wages, pursuant to N.J.S. 2A:152-18, was made to defray the expense of securing the transcript while he was an inmate in the New Jersey State Prison serving the sentence imposed as a result of the aforesaid Bergen County Court conviction.

(g) That Harold Sharpe has been released from the New Jersey State Prison, having completed the term of imprisonment which he was required to serve as a result of the aforesaid Atlantic County Court conviction.

[fol. 26] 4. (a) That at a time subsequent to September 1958 Henry Giannone was tried and convicted of a crime in the Passaic County Court.

(b) That Henry Giannone appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-73-59, A-507-59 and A-508-59.

(c) That Henry Giannone petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of October 20, 1960.

(e) That Henry Giannone's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 8, 1961).

(f) That, as of this date, there has been no garnishment of Henry Giannone's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Henry Giannone is now an inmate at the New Jersey State Prison pursuant to the aforesaid Passaic County Court conviction.

5. (a) That at a time subsequent to September 1958 Ronald Walsh was tried and convicted of a crime in the Morris County Court.

(b) That Ronald Walsh appealed this conviction to the Superior Court, Appellate Division.

(c) That Ronald Walsh petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

[fol. 27] (d) That the Appellate Division granted that petition by Order of February 23, 1962.

(e) That Ronald Walsh's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 17, 1962).

(f) That, as of this date, there has been no garnishment of Ronald Walsh's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Ronald Walsh is now an inmate at the New Jersey State Prison pursuant to the aforesaid Morris County Court conviction.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

DATED: September 1, 1964.

[fol. 28]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

REQUEST FOR ADMISSION OF FACTS FROM DEFENDANT LERNER—Filed September 3, 1964

TO: LOUIS M. TURCO, ESQ.
Attorney for Defendant Lerner
Office of Essex County Counsel
Hall of Records
Newark, New Jersey

SIR:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 36, plaintiff requests defendant Harry Lerner, within 10 days after service of this request, to admit for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed, the truth of the following facts:

1. (a) That at a time subsequent to September 1958 Wilbert W. Johnson was tried and convicted of a crime in the Essex County Court.

(b) That Wilbert W. Johnson appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-242-60 and A-158-61).

(c) That Wilbert W. Johnson petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of January 23, 1962.

[fol. 29] (e) That Wilbert W. Johnson's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 24, 1962).

(f) That, as of this date, there has been no garnishment of Wilbert W. Johnson's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Wilbert W. Johnson is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

2. (a) That at a time subsequent to September 1958 Thomas Hodgson was tried and convicted of a crime in the Essex County Court.

(b) That Thomas Hodgson appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-124-59 and A-615-59).

(c) That Thomas Hodgson petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of November 14, 1960.

(e) That Thomas Hodgson's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 14, 1963).

(f) That, as of this date, there has been no garnishment of Thomas Hodgson's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

[fol. 30] (g) That Thomas Hodgson is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

3. (a) That at a time subsequent to September 1958 Elijah Coleman was tried and convicted of a crime in the Essex County Court.

(b) That Elijah Coleman appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-176-60 and A-594-60).

(c) That Elijah Coleman petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of September 29, 1961.

(e) That Elijah Coleman's conviction was affirmed by the Appellate Division (Mandate on Affirmance of February 27, 1963).

(f) That, as of this date, there has been no garnishment of Elijah Coleman's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Elijah Coleman is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

DATED: September 1, 1964.

[fol. 31]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT LERNER AND ANSWERS THERETO—Filed September 14, 1964

TO: NICHOLAS T. FERNICOLA, ESQ.
Essex County Counsel
Attorney for Defendant Harry Lerner
Hall of Records
Newark, New Jersey

SIR:

PLEASE TAKE NOTICE that the plaintiff demands that defendant Harry Lerner furnish answers to the following Interrogatories within the time prescribed by law:

1. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

Parties to this action and any others who may be discovered in our continuing investigation.

2. State the names and addresses of any and all proposed expert witnesses, and areas in which they are expert.

None proposed at this time.

[fol. 32] 3. If it is claimed that plaintiff, any of his agents, servants, employees, or attorneys have made any admissions concerning the subject matter of this action, state whether the same are in writing or not, and if so attach copies hereto. In lieu thereof, or if the admissions were not in writing, state the date or dates upon which made, and furnish the names and addresses of all persons by whom and to whom made, the places where made and the substance thereof.

None known at this time.

4. What is your version of how the incidents alleged in the Complaint occurred?

Plaintiff's appeal of his conviction was denied by the Appellate Division of the N. J. Superior Court. The Essex County Treasurer filed a notice with the Business Manager of the State Prison to withhold plaintiff's earnings to reimburse the Treasurer in the amount of $215.00 for the transcript of the trial below, pursuant to N.J.S.A. 2A:152-17 and 2A:152-18.

5. State the facts upon which defendant Lerner relies for his First Defense, i. e., the Complaint fails to state a claim upon which relief can be granted.

Plaintiff has failed to show that his constitutional rights have been violated, and he has not shown any additional facts for which he could obtain relief.

[fol. 33] 6. State the facts upon which defendant Lerner relies for his Second Defense, i. e., that the act or acts done by defendant Lerner were done in his official capac-

ity as Treasurer of Essex County and were done in full compliance with law.

Defendant Harry Lerner was Essex County Treasurer and his action complained of in the complaint were in compliance with N.J.S.A. 2A:152-17 and N.J.S.A. 2A:152-18.

7. State the facts upon which defendant Lerner relies for his Third Defense, i. e., that this Court has no jurisdiction over the subject matter of this action.

Plaintiff seeks a temporary injunction against the execution of the aforementioned statutes, and a Declaratory Judgment.

8. State the facts upon which defendant Lerner relies for his Fourth Defense, i. e., that the issues in this cause are not proper or substantial questions arising under the Constitution and Laws of the United States.

The aforesaid state statutes are not in violation of any Constitutional right of plaintiff. Plaintiff's claim is frivolous.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 34]

[*Duly sworn to by Harry Lerner, jurat omitted in printing (all in italics)*]

[fol. 35]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANTS YEAGER AND DEMPSKY AND ANSWERS THERETO.—Filed September 14, 1964

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

ATTN: EUGENE T. URBANIAK, ESQUIRE
Deputy Attorney General

SIR:

PLEASE TAKE NOTICE that plaintiff demands that defendants, Howard Yeager and A. L. Dempsky, furnish answers to the following Interrogatories within the time prescribed by law.

1. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

Joseph A. Rinaldi, c/o New Jersey State Prison, Howard Yeager, New Jersey State Prison, A.L. Dempsky, New Jersey State Prison, Harry Lerner, Treasurer, Essex County Court House, Madeline Rively, New Jersey State Prison, Justices of New Jersey Superior Court, Appellate Division, Trenton, New Jersey, Members of Essex County Prosecutor's staff, Newark, New Jersey, Essex County Clerk, Newark, New Jersey.

2. State the names and addresses of any and all proposed expert witnesses, and areas in which they are expert.

None proposed at this time.

[fol. 36] 3. If it is claimed that plaintiff, any of his agents, servants, employees, or attorneys have made any admissions concerning the subject matter of this action, state whether the same are in writng or not, and if so, attach copies hereto. In lieu, thereof, or if the admissions were not in writing, state the date or dates upon which made, and furnish the names and addresses of all persons by whom and to whom made, the places where made and the substance thereof.

None known at this time.

4. What is your version of how the incidents alleged in the Complaint occurred.

Plaintiff, an inmate confined in New Jersey State Prison, applied for a copy of the transcript of testimony taken at his trial in order to appeal, pursuant to N.J.S.A. 2A:152-17. The plaintiff's application for relief was denied by the New Jersey Appellate Division. The Essex County Treasurer filed a notice of payment with the New Jersey State Prison of $215.00, and the New Jersey State Prison Business Manager commenced to withhold plaintiff's institutional earnings to reimburse the County Treasurer in said sum, pursuant to the statute.

5. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Second Defense, i.e., the Complaint fails to state a claim upon which relief can be granted.

No rights secured to plaintiff by the U.S. Constitution and federal statutes have been violated.

[fol. 37] 6. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Third Defense, i.e., that the act or acts done by these defendants, complained of by plaintiff in his Complaint, were done in their official capacity as State officers and were done in compliance with the law.

Howard Yeager and A.L. Dempsky were, respectively, Warden and Business Manager of New Jersey State Prison at the time complained of in the complaint and N.J.S.A. 2A:152-17 and N.J.S.A. 2A:152-18 were in ef-

fect at said time, and they acted in compliance with said laws.

7. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Fourth Defense, i.e., that this Court has no jurisdiction over the subject matter of this action for the reason that the relief sought by plaintiff should not be granted unless heard and determined by a three Judge Court as required by 28 U.S.C.A. 2281.

Plaintiff's complaint asks that the enforcement of N.J.S.A. 2A:152-17 et seq., be restrained by restraining defendants in the enforcement or execution of such statute by an injunction pro tempore, and later, a declaratory judgment.

8. State the facts upon which refendants Howard Yeager and A.L. Dempsky rely for their Fifth Defense, i.e., that the matters in controversy in this action are not proper or substantial questions arising under the Constitution and laws of the United States.

There is no federal law providing that an inmate may not be required to pay, from his institutional earnings for the expense incurred in preparing a transcript for him for an appeal by him as was done by plaintiff herein; and the matters in controversy involve a claim devoid of merit and frivolous.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 38]

[*Duly sworn to by Howard Yeager and A.L. Dempsky, jurat omitted in printing (all in italics)*]

[fol. 39]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWERS OF DEFENDANT LERNER TO REQUEST FOR ADMISSION OF FACTS—Filed September 15, 1964

The defendant, HARRY LERNER, Essex County Treasurer, by way of Answers to Request for Admission of Facts says that:

1. Defendant, HARRY LERNER, admits all the allegations under paragraph one.

2. Defendant, HARRY LERNER, admits (a), (b), (c), (d), (e) and (f) under paragraph two, adding that of this date an appeal is pending before the N. J. Supreme Court.

3. Defendant, HARRY LERNER, admits (a), (b), (c), (d), (e), (f) and (g) under paragraph three, adding that of this date, there is presently pending an action for post-conviction relief.

NICHOLAS T. FERNICOLA
Attorney for Defendant,
Harry Lerner

By /s/ Louis M. Turco
LOUIS M. TURCO
Assistant to the County Counsel

Dated: September 14, 1964

[fol. 40]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[File Endorsement Omitted]

ANSWERS OF DEFENDANTS YEAGER AND DEMPSKY TO PLAINTIFF'S REQUESTS FOR ADMISSION OF FACTS—
Original Filed October 21, 1964

STATE OF NEW JERSEY
NEW JERSEY STATE PRISON
Trenton 6, N. J.

September 24, 1964

Mr. Eugene T. Urbaniak,
Deputy Attorney General,
Department Institutions and Agencies,
State Office Building

RE: Jos. A. Rinaldi vs. Howard Yeager

Dear Mr. Urbaniak:

In reply to your letter of September 11, 1964, concerning the above matter, the following information is hereby submitted:

Kenneth Hall, #39192, received transcript and invoice for $170.00 from Bergen County. We wrote to the County authorities on 8-13-62 concerning disposition on said transcript, no reply or order was received.

Eugene Britt, #39193, received transcript from Bergen County, no invoice, reply, or order was ever submitted to this office.

Harold Sharpe, #37890, paroled on 12-10-63, transcript and invoice for $284.25 was received from Atlantic County. We wrote the County authorities on 4-5-61 concerning same, no reply received.

Harry Giannone, #37278, transcript and invoice for $695.00 from Passaic County was received. No further information or disposition submitted.

Ronald Walsh, #38338, transcript received from Morris County. No invoice or disposition submitted.

Very truly yours,

/s/ H. Yeager
H. YEAGER
Principal Keeper

HY:hem
cc: Mr. Reynolds
Records Section

[fol. 41]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil 70-64

[Title Omitted]

CLERK'S CERTIFICATE

I, Michael Keller, Jr., Clerk of the United States District Court for the District of New Jersey, do hereby certify that the paper transmitted herewith and enumerated below is an exact duplicate of the original paper on file in this office, and comprises the supplemental record on appeal in the above-entitled matter.

Copy of docketed paper

27. Answers of Defendants' Yeager and Dempsky to plaintiff's Requests for Admission of Facts.

In Witness Whereof, I have hereto subscribed my name and affixed the seal of said Court, at Newark, in said District, this 14th day of February, 1966.

MICHAEL KELLER, JR., Clerk

By /s/ Vera A. Alexander
Deputy Clerk

* * * *

[fol. 42]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

STIPULATION OF FACTS—Filed September 24, 1964

The within Stipulation of Facts is agreed to by counsel for all parties. It is presented to the Court for purposes of determining plaintiff's motion for summary judgment.

This is a civil action instituted by Joseph A. Rinaldi who is presently confined as an inmate at the New Jersey State Prison. Plaintiff is confined there as a result of two separate convictions: the first conviction was in 1959; the second was in 1960.

The first conviction was in May 1959 in the Essex County Court before Judge Joseph G. Lyons. Plaintiff was sentenced to an aggregate term of 8 to 10 years imprisonment. This sentence was composed of a 6 to 7-years sentence on the first count of the indictment and a 2 to 3-year sentence on the second and third counts. The sentences were to run concurrently.

Plaintiff petitioned the Superior Court, Appellate Division, for leave to prosecute an appeal *in forma pauperis*. This petition was granted. Plaintiff then petitioned the Appellate Division for a transcript of the testimony and proceedings in the trial court. By Order of December [fol. 43] 14, 1959 (Exhibit A), that petition was granted. On July 13, 1959, plaintiff had signed a State Prison form which stated that he had been informed on that day that:

> ". . . should I obtain a copy of the transcript of my case and lose my appeal I shall, as provided in N.J.S. 2A:157-18, be obliged to pay for the transcript by having all of my institutional earnings withheld until that debt is paid."

A copy of this form is attached as Exhibit B.

Plaintiff's 1959 conviction was affirmed by the Appellate Division on June 17, 1960 (Docket No. A-53-59).

In May 1960, while plaintiff was serving the term of imprisonment imposed for the 1959 conviction, he was tried and convicted on new indictments in the Essex County Court before Judge Ferdinand D. Masucci. Plaintiff was sentenced to terms of imprisonment of 5 to 10 years on each of two indictments, the terms to run concurrently.

Plaintiff petitioned the Superior Court, Appellate Division, for leave to prosecute an appeal *in forma pauperis* from this conviction. On June 16, 1960, this petition was granted. He then petitioned the Appellate Division for a transcript of the testimony and proceedings in the trial court. On June 21, 1960, that petition also was granted (Exhibit C). Plaintiff later petitioned the Appellate Division for a transcript of the summations in the 1960 trial but that petition was denied by an April 1, 1961, Order (Exhibit D).

[fol. 44] Plaintiff's 1959 conviction was affirmed by the Appellate Division on September 18, 1961 (Docket No. A-787-59). Copies of the Appellate Division opinion and Mandate on Affirmance are attached as Exhibits E and F. On October 16, 1961, plaintiff petitioned the Appellate Division for a rehearing. The Appellate Division denied that petition by a February 27, 1962, Order.

On March 5, 1962, plaintiff filed his petition for certification with the New Jersey Supreme Court. The petition for certification was denied on the merits by Order of April 13, 1962. Plaintiff then petitioned the United States Supreme Court for a writ of certiorari. This petition was denied on October 8, 1962. *Rinaldi* v. *New Jersey*, 371 U.S. 847 (1962).

In August 1963, subsequent to the denial of the writ of certiorari on the 1960 conviction, the Essex County Treasurer requested the Essex County Prosecutor for a list of those inmates who had appealed as indigents and whose applications for relief had been denied. By letter of September 20, 1963 (Exhibit G), the Prosecutor's office provided the Treasurer with a list of over two dozen such inmates. The Essex County Treasurer then notified the

State Prison authorities that plaintiff's appeal for a relief from the 1960 conviction had been denied. The Classification Department of the State Prison, by a memorandum of November 11, 1963, notified the State Prison Business Manager (defendant A. L. Dempsky):

> "We have been notified that the prisoner's [Rinaldi] appeal for relief from his sentence has been denied. Pursuant to N.J.S. 2A:157-18 kindly withhold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $215 (invoice attached)."

[fol. 45] A copy of this memorandum (Exhibit H) was sent to plaintiff. Court reporter Eugene Donegan's $215.00 invoice for the transcript of the 1960 conviction is attached as Exhibit I. On January 24, 1964, plaintiff filed his Complaint in this action.

Plaintiff's institutional earnings are $.20 per day for a five-day week. Inmates imprisoned for life are paid $.33 per day. Plaintiff's full institutional earnings are now being withheld and have been withheld since about November 1963. Those wages withheld are being sent to the Essex County Treasurer to reimburse him for the $215.00 as court stenographer's bill.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

ARTHUR J. SILLS, Esq.
Attorney General of New Jersey
Attorneys for Defendants
Yeager and Dempsky

By /s/ Eugene T. Urbaniak
Deputy Attorney General

NICHOLAS T. FERNICOLA, Esq.
Essex County Counsel
Attorney for Defendant Lerner

By /s/ Louis M. Turco

[fol. 46]

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

EXHIBIT "A" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket A-53-59

RECEIVE
Office of
Dec. 18, 1959
Prosecutor of Essex Court
Newark, N. J.

STATE OF NEW JERSEY

vs.

JOSEPH R. RINALDI

ON PETITION FOR TRANSCRIPT
ORDER GRANTING PETITION

This matter having been brought before the court on the petition of the defendant herein pursuant to N.J.S. 2A:152-17 for a transcript of the testimony and proceedings in the trial court and the defendant having appealed to this court and the court being satisfied that such transcript is necessary for the prosecution of the appeal and that the defendant is unable, by reason of poverty, to defray the expense of procuring the same,

It is on this 14th day of December, 1959,

ORDERED:

1. Frances C. Young be and is hereby directed to prepare an original and one first carbon copy of the transcript of entire proceedings before Judge Lyons in the Essex County Court on May 28 and June 10, 1959 and to file the two copies with the Clerk of the Court from which the appeal is taken, notifying the defendant and the State of the filing thereof, the carbon copy for the use of the defendant during the period in which he is preparing his brief and thereafter for the use of the State in accordance with R.R. 1:6-1(c);

2. The expense thereof be and is hereby certified to the Essex County Treasurer who shall pay such expense upon presentation of an appropriate voucher approved by the court;

3. The Essex County Treasurer, pursuant to N.J.S. 2A:157-18, shall file a notice of said payment and the amount thereof with the keeper or warden of N. J. State Prison, Trenton, N. J. to the end that the Treasurer shall be reimbursed from the institutional earnings of the defendant, upon the filing of an appropriate order, in the event the defendant's application for relief is denied.

For the Court:

SIDNEY GOLDMANN
S.J.A.D.

[fol. 47] EXHIBIT "B" TO STIPULATION

Date 13 Jul 59

SUBJECT: Notification to inmates of provision of N.J.S. 2A:157-18 re: payment of transcript of case obtained under the referred to Statute.

I WAS TODAY INFORMED BY /s/ Illegible (signature of employee) THAT SHOULD I OBTAIN A COPY OF THE TRANSCRIPT OF MY CASE AND LOSE MY APPEAL I SHALL, AS PROVIDED IN N.J.S. 2A:157-18, BE OBLIGED TO PAY FOR THE TRANSCRIPT BY HVING ALL OF MY INSTITUTIONAL EARNINGS WITHHELD UNTIL THE DEBT IS PAID.

Signature of Inmate X /s/ Joseph Rinaldi
Inmate's No. X 36833
Inmate's Location 1 R.

(NOTE: This form is to be forwarded to and filed in, the Admission and Records Office.)

[fol. 48]

EXHIBIT "C" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket AM-186-59

FILED
JUN 21, 1960
MD
/s/ Illegible
Clerk

STATE OF NEW JERSEY

vs.

JOSEPH R. RINALDI

ON PETITION FOR TRANSCRIPT
ORDER GRANTING PETITION

This matter having been brought before the court on the petition of the defendant herein pursuant to N.J.S. 2A:152-17 for a transcript of the testimony and proceedings in the trial court and the defendant having appealed to this court and the court being satisfied that such transcript is necessary for the prosecution of the appeal and that the defendant is unable, by reason of poverty, to defray the expense of procuring the same,

It is on this 21st day of June, 1960,

ORDERED:

1. EUGENE DONEGAN be and is hereby directed to prepare an original and one first carbon copy of the transcript of entire proceedings before Judge Masucci in the Essex County Court on March 28 to April 1 and May 5, 1960 and to file the two copies with the Clerk of the Court from which the appeal is taken, notifying the defendant and the State of the filing thereof, the carbon

copy for the use of the defendant during the period in which he is preparing his brief and thereafter for the use of the State in accordance with R.R. 1:6-1(c);

2. The expense thereof be and is hereby certified to the Essex County Treasurer who shall pay such expense upon presentation of an appropriate voucher approved by the court;

3. The Essex County Treasurer, pursuant to N.J.S. 2A:157-18, shall file a notice of said payment and the amount thereof with the keeper or warden of N.J. State Prison, Trenton, N.J. to the end that the Treasurer shall be reimbursed from the institutional earnings of the defendant, upon the filing of an appropriate order, in the event the defendant's application for relief is denied.

For the Court:

/s/ Sidney Goldmann
S.J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 49] EXHIBIT "D" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket A-787-59

STATE OF NEW JERSEY

vs.

JOSEPH RINALDI

ON PETITION FOR ADDITIONAL TRANSCRIPT
ORDER DENYING PETITION

The defendant having applied by petition, filed March 24, 1961, for a transcript of the testimony in this matter to be paid for by the County of Essex, and the Court having considered the same, it is on the 1st day of April, 1961

ORDERED that the said petition is denied.*

FOR THE COURT:

/s/ Sidney Goldmann
S.J.A.D.

FILED
APR 3, 1961
MD

/s/ Illegible
Clerk

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

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* On June 21, 1960 this Court directed that the court reporter prepare and file a free transcript. Defendant represents that the transcript was not received until January, 1961. On February 8, 1961 we granted an extension of 30 days for defendant to perfect his appeal. Defendant now claims that the transcript is incomplete because it does not include the summations of the prosecutor and defense attorney. In his petition for leave to appeal defendant nowhere suggests a ground of appeal that would require him to have the summations.

[fol. 50]

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

EXHIBIT "E" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-787-59

FILED
SEP 18, 1961
G.A.B.
/s/ Illegible
Clerk

STATE OF NEW JERSY, PLAINTIFF-RESPONDENT

vs.

JOSEPH RINALDI, DEFENDANT-APPELLANT

Submitted September 18, 1961—Decided September 18, 1961.

Mr. Joseph Rinaldi, appellant *pro se*.

Mr. Brendan T. Byrne, Essex County Prosecutor, attorney for respondent (*Mr. Martin L. Greenberg*, Special Legal Assistant Prosecutor, on the brief).

PER CURIAM

We have considered the points raised by appellant in light of the stenographic transcript and find all to be devoid of merit.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 51] EXHIBIT "F" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal Docket No. A-787-59

Criminal Action on Appeal

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT

vs.

JOSEPH RINALDI, DEFENDANT-APPELLANT

MANDATE ON AFFIRMANCE

This cause having been duly argued before this Court by Joseph Rinaldi, appellant pro se, and Brendan T. Byrne, counsel for the respondent, and the Court having considered the same.

It is hereupon ordered and adjudged that the judgment of the said Essex County Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court and that the record be remitted to the Essex County Court to be there proceeded with in accordance with the rules and practice relating to that Court, consistent with the opinion of this Court.

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 18th day of September, 1961.

/s/ Illegible
Clerk of the Superior Court

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 52] A-787-59

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

MANDATE ON
AFFIRMANCE

FILED
SEP 18 1961
G.A.B.
/s/ Illegible
Clerk

RECEIVED

LAW DEPARTMENT

PER.....

SEP 1 1964

[fol. 53]

EXHIBIT "G" TO STIPULATION

OFFICE OF
THE COUNTY PROSECUTOR
OF ESSEX COUNTY

COURT HOUSE
NEWARK 2, N. J.

EDWARD T. BYRNE
PROSECUTOR

624-1818

September 20, 1963

Mr. Harry Lerner
Department of Finance
Hall of Records
Newark, New Jersey

Dear Mr. Lerner:

In answer to your inquiry of August 29th addressed to Prosecutor Byrne concerning the result of various appeals by indigents, so that you may collect in those cases where the application for relief has been denied, the following is a list of those defendants who sought help before the Appellate Courts of the State and were denied same:

Walter N. Davis
#36190 Richard Allen Harris
#29400 James S. Smith
#36933 Joseph R. Rinaldi
#32779 Bennie Jenkins
#36949 Acuna,
Carl Mason
37917 William Schuyler
38411 Layton & Smith
#37991 Lawrence Graham
#38353 Joseph Morton & Thomas Wigfall
#36511 Willie Selph, John H. Jones & Casper Sheppert
#38537 James Green
#38370 Lamar Harris
#36408 James Green
Walter Nerwinski
37916 Kenneth Anderson
#37911 Ernest Jordan
#39397 James Flounders
#39389 Ellis Clark and others
#39003 James Culver and Brady Howard, Jr.

Yours very truly,

Peter Murray
Peter Murray
Assistant Prosecutor

PM/dt

N. J. STATE PRISON
CLASSIFICATION DEPARTMENT

DATE: 11/13/63.

TO: Mr. A. L. Dempsky
Business Manager
Trenton, N. J.

RE: NAME: Joseph Rinaldi (Rak) NO: 36833 COUNTY: Essex

We have been notified that the prisoner's appeal for relief from his sentence has been denied.

Pursuant to NJS 2A: 157-18 kindly withhold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $15.— (Invoice attached).

DCT:ks
CC inmate

DONALD C. THOMS
Sr. Classification Officer

[fol. 54]

EXHIBIT "H" TO STIPULATION

[fol. 55]

EXHIBIT "I" TO STIPULATION

DUPLICATE INVOICE

COUNTY OF ESSEX, NEW JERSEY

349 HALL OF RECORDS, NEWARK 2, N. J.

#31833

Eugene Donegan
Claimant's Name

Department or Institution: Courts

415 Court House
Address

Newark 2, N. J.
City and State

Order Number	Contract Item Number	Date of Delivery or Service	Quantity	Purchase Price Unit	UNIT PRICE Dollars	UNIT PRICE Cents	UNIT PRICE Per	AMOUNT Dollars	AMOUNT Cents
				891 State of New Jersey v Joseph R. Rinaldi - Indictment 1758-57 1760-57 (AM 166-59)					
				To furnishing transcript of proceedings in the above matter taken before Hon. P.D. Masucci, JCC, on March 23 to April and May 8, 1960, pursuant to order of Hon. Sidney Goldman, JCAD, on application of said Joseph R. Rinaldi, DEFENDANT DEFENDANT.					
				860folios at 25 cents (2 copies)				$215	00
				A.R.D. 2/15/60 Jack R. Fitzgerald Dean					

DETACH AND RETAIN FOR YOUR FILES

TOTAL	$	
Cash Discount (Claimant Omit)	$	
Amount of claim to be paid	$	

[fol. 56]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

OPINION—February 18, 1965

Before: MCLAUGHLIN, Circuit Judge, and MEANEY and SHAW, District Judges.

/s/ McLaughlin

By MCLAUGHLIN, Circuit Judge.

This case is before us on a Stipulation of Facts on behalf of all the parties, filed September 24, 1964. From that stipulation we find the following facts.

Plaintiff is presently confined in New Jersey State Prison as the result of two separate convictions, the first in May of 1959, in which he was sentenced to an aggregate term of eight to ten years imprisonment. Plaintiff was given leave to appeal that conviction in forma pauperis. He petitioned for a transcript of the trial testimony which he was allowed. On July 13, 1959 he signed a State Prison form which stated that he had been informed that:

"* * * Should I obtain a copy of the transcript of my case and lose my appeal I shall, as provided in

N.J.S. 2:152-18, be obliged to pay for the transcript by having all of my institutional earnings withheld until that debt is paid." [1]

[fol. 57] The Appellate Division affirmed plaintiff's 1959 conviction.

In May, 1960, plaintiff was tried and convicted under two new indictments. He was sentenced to terms of imprisonment of five to ten years on each of these, the sentences to run concurrently. He was allowed to appeal

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[1] The New Jersey statute with which we are concerned is 2A:152-17, 18, 19 which read as follows:

"2A:152-17. Payment of transcripts for indigent defendants in criminal cases

"Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense. L.1956, c. 134, p. 555, § 1.

"2A:152-18. Reimbursement

"The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the transcript of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L.1956, c. 134, p. 555, § 2.

"2A:152-19. Effective date

"This act shall take effect January 1, 1957. L.1956, c. 134, p. 556, § 3."

these convictions in forma pauperis and granted a transcript of the trial testimony. The convictions were affirmed by the Appellate Division. Petition to the New Jersey Supreme Court was denied as was application for certiorari to the United States Supreme Court.

In 1963 the Essex County Treasurer notified the State Prison Authorities that plaintiff's appeal from his 1960 convictions had been denied and asked that Rinaldi's institutional earnings be withheld in order to reimburse [fol. 58] the County Treasurer in the amount of $215, the cost of the transcript. Since then plaintiff's said earnings of twenty cents a day have been withheld from Rinaldi and sent to the Essex County Treasurer in accordance with the above referred to New Jersey statute.

On February 10, 1964 plaintiff filed this suit. In it he alleges that because his institutional wages are being withheld from him and turned over to the Essex County Treasurer to help pay for the trial transcript furnished him on his second appeal, he is being subjected to cruel and unusual punishment, he is being deprived of due process of law, discriminated against and denied equal protection of the law, all in violation of his Federal Constitutional rights. The defendants answered stating that they acted in accordance with the New Jersey law, citing the statute.

Counsel for plaintiff was assigned by Judge Meaney and thereafter filed a notice of motion for summary judgment and for an injunction against State enforcement of 2A:152-18. On November 16, 1964, Chief Judge Biggs in accordance with Section 2284, Title 28, United States Code, named this three judge court for the hearing and determination of this cause. Briefs were submitted on behalf of the parties and oral argument was had on February 1, 1965.

Both sides agree that under the Stipulation of Facts plus Admissions and Answers to Interrogatories there is no disputed material fact and that the suit is properly before this court for disposition on summary judgment.

On behalf of the plaintiff it is argued that he has been [fol. 59] deprived of due process and equal protection under the Fourteenth Amendment. In addition it is urged

that the reimbursement feature of the New Jersey statute violates the Thirteenth Amendment by forcing him to help pay for his transcript through his institutional wages.

What we are concerned with is a collateral situation which arose out of plaintiff's appeal from his 1960 convictions. On that appeal he was allowed to proceed in forma pauperis, he was then furnished with a copy of the trial testimony. The appeal was fully argued in the Appellate Division of the New Jersey State Court System. The decision going against him, plaintiff's appeal was presented to the State Supreme Court. Rejected there, it was taken to the United States Supreme Court on application for certiorari which was denied. Beyond all doubt, plaintiff was provided with the untrammeled means for complete appellate review, everything "* * * accorded to all who have money enough to pay the costs in advance." Griffin v. Illinois, 351 U.S. 12, 18 (1956). Plaintiff legitimately took advantage of the means furnished by New Jersey and did obtain the full review to which he was entitled as a matter of equal justice. There is not the slightest intimation that he was hindered or hampered in any possible way as he moved forward with his appeal. He was given due process in letter and spirit. He was given the same protection available to the "rich" and the "powerful". In his situation there was no "age old problem." Griffin, supra, p. 16. Mr. Justice Black in Griffin, supra, p. 17, stressed that "Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of [fol. 60] justice in every American court.'" That central aim was achieved in the Rinaldi appeal. He stood on an equality with all people in taking his appeal and carrying it through our highest tribunal of justice, the United States Supreme Court. All of that is an accomplished fact. There is no genuine controversy before us regarding it. We are not constituted to render an advisory or academic opinion on some alleged problem that might have arisen in connection with 2A:152-18 prior to Rinaldi taking his appeal. That appeal is over and done with and nowhere within it was Rinaldi subjected to any violation

of due process or equal protection. This is not the Griffin case. This is the salutary aftermath of that litigation wherein New Jersey made certain by law that her indigent prisoners would have available record transcripts for appeal purposes. The Griffin decision settled any possible quibbling about the necessity of equipping an indigent appellant in a criminal action with an adequate trial transcript. It gives such person equal treatment under our Federal law, not preferential treatment. It is no undue burden upon litigants who are able to do so, that they pay for transcripts which they obtain. In the instance before us, New Jersey, carrying out immediately the mandate of the Supreme Court, committed itself to furnishing its indigent prisoners with transcripts on appeal. The New Jersey law provided further that after the conclusion of an appeal and if a prisoner had finally lost out and remained in custody that the particular county be reimbursed for its transcript outlay, from his prison earnings.

It is that reimbursement element which is attacked as contrary to the Thirteenth Amendment. It is described as a discriminatory condition to the right of appeal, as penalizing an indigent because he is poor, as forcing [fol. 61] the unsuccessful appellant into bondage, as against the maintenance of complete free and voluntary labor throughout the United States.

There is no mystery about the reimbursement phase before us. As we have said, this only comes into being after appellant has pursued his appeal to its finality, has been unsuccessful and is still in confinement. In those circumstances the county becomes entitled to reimbursement from his institutional earnings. Obviously the reimbursement is within his means. It is from the sum the prisoner receives that reimbursement is to be had. The statute leaves the County a wide discretion regarding the amount it deducts from the prisoner's income. There is no proof before us whether prisoners are allowed extra items, such as smoking material, free or if the ordinary means of obtaining these is with their work pay. Whatever the situation we are entirely satisfied that the statutory provision for reimbursement is no violation per se

of plaintiff's Federal Constitutional rights. The administration of the method and rate of reimbursement is rightly delegated to the reasonable discretion of the County Prison Authorities. There is no Federal cause of action made out here on the theory advanced. Plaintiff is definitely able to make installment payments for his transcript. This may inconvenience him. To perhaps numerous litigants in criminal actions on the outside paying for their transcripts may be just as inconvenient and more so. We do not see that this problem of paying within his means for his important trial record is inflicting hardship upon Rinaldi. Indeed, paying what he can towards the cost of something that was most necessary to him should be helpful to him retaining or reestablishing his self respect. In common fairness he should pay what he can. If for some good reason the entire amount of his pay is too much [fol. 62] he can request an adjustment from the Prison Authority. The reimbursement of course has no bearing whatsoever on his sentence. Burns v. Ohio, 360 U.S. 252 (1959) has no applicability to this suit. There the court clerk would not file a prisoner's appeal motion papers absent the filing fee. In this instance all plaintiff's appeal papers were filed without cost. Smith v. Bennett, 365 U.S. 708 (1961) is in the same category. There was no barrier, financial or otherwise, interposed in Rinaldi's appeal and his exercise of his fully recognized right to so appeal. The reference by plaintiff to Pollack v. Williams, 322 U.S. 1095 (1944) is founded upon the erroneous premise that under the admitted facts Rinaldi has no obligation to, within his means, reimburse the County for his trial record.

Finally, complaint is made that granting for the sake of argument that the statute is not unconstitutional, its administration is discriminatory against the plaintiff because in some instances prisoners who have been given transcripts for their appeals are not being "subjected to reimbursement". Generally speaking, the question involved is New Jersey State and County business. Objection, if any, to the manner in which the statute is administered can be made through the proper New Jersey facilities. Even as to this it is difficult to see any dis-

crimination against the plaintiff. His reimbursement has been handled in accordance with the statute. Assuming that on occasion reimbursement has not been insisted upon because of laxness or favoritism and there is no evidence of this before us, plaintiff is not being harmed, he is merely making reimbursement for his transcript in accordance with the law of New Jersey. His reimbursement is not increased one penny because what may happen in other reimbursement circumstances.

[fol. 63] Our Findings of Fact and Conclusions of Law clearly appear in this opinion and therefore will not be listed separately.

This litigation has been most competently prepared and presented by both sides. The court is particularly grateful to Frederick B. Lacey, Esq., assigned counsel for plaintiff, for his unselfish, exhaustive services on behalf of plaintiff.

The motion for summary judgment and for an injunction on behalf of plaintiff is denied. Summary judgment is granted in favor of the defendants and against the plaintiff.

[fol. 64]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

ORDER ON MOTION FOR SUMMARY JUDGMENT—
February 18, 1965

In accordance with the opinion of the court entered in this case today it is on this 18th day of February, 1965 ORDERED that plaintiff's motion for summary judgment and for an injunction be and it is hereby denied. It is FURTHER ORDERED that summary judgment is granted in favor of the defendants and against the plaintiff.

GERALD MCLAUGHLIN
Circuit Judge

THOMAS F. MEANEY
District Judge

ROBERT SHAW
District Judge

[fol. 65]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF MOTION TO CORRECT JUDGMENT—
Filed March 10, 1965

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

Attention: Eugene T. Urbaniak, Esquire
Deputy Attorney General

NICHOLAS T. FERNICOLA, ESQUIRE
Essex County Counsel
Hall of Records
Newark, New Jersey

Attention: Louis M. Turco, Esquire

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for plaintiff, will move the United States District Court, Newark, New Jersey, at such time as the Court directs, for an Order, pursuant to Rule 60(b) (1) of the Federal Rules of Civil Procedure, setting aside the Summary Judgment granted in favor of the defendants and against the plaintiff on the grounds that there is a substantial controversy as to a material fact, i.e. whether the application of the reimbursement provision of N.J.S. 2A:152-18 subjects the plaintiff to the infliction of cruel and unusual punishment in violation of the Eighth Amendment.

In support of this motion, plaintiff will rely upon the attached affidavit of Frederick B. Lacey.

/s/ FREDERICK B. LACEY
FREDERICK B. LACEY
Attorney for Plaintiff

[fol. 66]

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW JERSEY)
: ss
COUNTY OF ESSEX)

RINALDI AFFIDAVIT

FREDERICK B. LACEY of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the attorney for the plaintiff and have been in charge of this litigation since its inception. I am personally familiar with the facts stated hereinafter.

2. The grounds for the Summary Judgment previously sought by plaintiff were that N.J.S. 2A:152-18 was unconstitutional *per se* and that it was being unconstitutionally administered, all in violation of the Thirteenth and Fourteenth Amendments. With the exception of one very brief reference in the brief filed by the defendant Lerner (Page 11, paragraph beginning "Secondly"), no reference was made in the briefs or in the supporting papers filed in connection with the application for Summary Judgment with respect to the fact that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on the plaintiff in violation of his rights under the Eighth Amendment. It was and is my understanding that the Eighth Amendment point could not be disposed of on Summary Judgment since there were substantial questions as to material facts about that point. Accordingly, the application for Summary Judgment was not made on Eighth Amendment grounds.

[fol. 67] 3. The Complaint filed by plaintiff *pro se* is replete with charges and allegations that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on him in violation of his Eighth Amendment rights.

4. At no time in this action did plaintiff or I, acting on plaintiff's behalf, waive the charge that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual

punishment on him. At no time did the defendants move for Summary Judgment on the entire case.

I therefore make this motion to correct the Judgment to indicate that Summary Judgment has been granted for defendants only on Thirteenth and Fourteenth Amendment questions presented in plaintiff's brief.

/s/ Frederick B. Lacey

Sworn and Subscribed to
before me this 9 day
of March, 1965.

/s/ Alice M. Madden
Notary Public

[SEAL]

[fol. 68]

[Affidavit of Service by Mail Omitted in Printing]

[fol. 69]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

* * * *

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

OPINION ON MOTION TO CORRECT JUDGMENT—
May 17, 1965

Before: McLAUGHLIN, Circuit Judge, and MEANEY and SHAW, District Judges.

/s/ McLaughlin

By McLAUGHLIN, Circuit Judge.

We have before us a motion to "correct judgment" entered in this action February 18, 1965. The reason urged for this is that plaintiff's application for summary judgment did not include his Eighth Amendment ground, namely, "* * * that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on him in violation of his Eighth Amendment rights." Therefore, asserts plaintiff the summary judgment should be corrected to indicate that judgment was granted defendants only on Thirteenth and Fourteenth Amendment questions. This necessitates a thorough study of all the material before us in the litigation in order to ascertain whether plaintiff's contention is meritorious.

In Paragraph II of the complaint it is alleged:

"Plaintiff is being denied the right to Due Process of the laws and being further subject to Cruel and

Unusual punishment in violation of the Seventh, Eighth and Fourteenth Amendments of the United States Constitution and various citations of the laws of the land incorporated in the substance of this application, and to the best of Plaintiff's lay knowledge there are no other cause or pretence for this complaint."

[fol. 70] This is repeated in substance under the caption "Argument". Then appears the following:

"POINT I

"PLAINTIFF IS BEING SUBJECT TO GARNISHMENT OF HIS FULL WAGES SUFFERING THE DENIAL OF THE RIGHT TO FURTHER LITIGATION, MANY PERSONAL NEEDS, A DENIAL OF DUE PROCESS AND DISCRIMINATION.

"The Eighth Amendment of the United States Constitution; guarantees that:

'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted'.

"Plaintiff alleges and contends that due to the Garnishment *per se* he is being subject to cruel and unusual punishment, wherefore the plaintiff works to the very best of his ability doing his job and duties while confined and yet at the end of the month, when the full population of the said Institution is paid for services rendered, his (plaintiff's) pay is garnished for the payment of said transcript, which is not for the purchase of the same but only for the temporary use during the preparation of briefs on appeal. That at this time the said transcript being paid for by the plaintiff is not in his possession or use and has long ago before this date returned to the Essex County Clerk.

"Plaintiff alleges and contends that due to the unconstitutional garnishment of his hard-earned wages he is without many personal needs such as listed herein:"

The needs listed consist of paper and facilities to prepare legal actions; personal items as toilet articles, smoking and correspondence materials; law books.

Immediately after the above are the following two paragraphs:

> "Due to the small and few facts alleged *supra*, plaintiff herein is being subject to 'cruel and unusual punishment', contrary to the guarantee of the Eighth Amendment of our United States Constitution, an inherent right to all citizens of our United States of America.
>
> "The Court will find from the oral hearing of this cause that plaintiff can and will submit more parol and documentary proof of the unconstitutional acts alleged, and not to lengthen this Complaint nor burden this Honorable Court has listed the same to a minimum praying to suffice so that summons will issue to the defendant(s) and the relief in quest be granted and the defendant(s) be restrained until final decree of this Honorable Court."

[fol. 71] On page 9 of the complaint the statement is made:

> "Plaintiff praying for relief under the Eighth and Fourteenth Amendments, prays that this Honorable Courts consideration be broad and elastic in view of the treatment the plaintiff is being subjected to, for there can be no doubt that discrimination . . . denial of actions in Courts of law . . . coupled with the hard earned wages being fully and unlawfully taken from the indigent plaintiff, the provisions of both the Eighth and Fourteenth Amendments are well in scope of consideration."

The defendants' answers, inter alia, denied that "* * * the issues in this case are proper or substantial questions arising under the Constitution and laws of the United States."

Appellant's motion for summary judgment was for an order "* * * granting summary judgment in plaintiff's favor for the relief demanded in the Complaint on the

ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; * * * In support of this Motion plaintiff will rely upon a Stipulation of Facts which will be submitted, agreed to by all parties, and upon such briefs and affidavits as may be filed."

In plaintiff's brief on his motion for judgment the Introductory Statement reads:

> "This is a motion for summary judgment made by plaintiff. In its essence the case involves an attack by plaintiff on the constitutionality of N.J.S. 2A: 152-18, and, in the alternative, an attack on the unconstitutional administration of that statute by the defendants."

The brief incorporates the Stipulation of Facts in toto. In addition thereto it notes Requests of Admission of Facts to the defendants, replies to those requested, interrogatories on behalf of plaintiff, answers thereto and a filed affidavit of plaintiff. The brief's Statement of Facts concludes:

[fol. 72] "Since there does not appear to be any disputed question as to a material fact this case is ripe for disposition on summary judgment."

The brief's first point is that the New Jersey reimbursement statute violates the Thirteenth and Fourteenth Amendments.[1] While the Eighth Amendment is not specifically named, the alleged cruel and unusual punishment set out in the complaint is gone into carefully in connection with the Thirteenth and Fourteenth Amendment arguments. The brief asserts that "The thrust of the reimbursement statute is that an indigent defendant appeals at his own peril. If, for any reason, the relief he seeks from the appellate court is denied he delivers himself into bondage. By exercising his right to appeal he must deprive himself of institutional wages during the term of his imprisonment if his appeal fails. In this

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[1] We have found no mention of the Thirteenth Amendment in the complaint.

respect he is discriminated against in favor of: (1) the unsuccessful non-indigent appellant who continues to draw his institutional wages; (2) the unsuccessful indigent appellant who has been released from prison before reimbursement is sought against him (see Reguests for Admission 3 (f) and (g) addressed to the Attorney General; (3) an indigent convicted of a capital offense, whose transcript the State provides free of charge (N.J.S. 2A: 152-18 does not apply to that type of indigent); (4) the successful indigent appellant.[1] The conclusion that the indigent has been deprived of due process and equal protection is reinforced by the undeniable fact that New Jersey has attempted to impose a discriminatory con- [fol. 73] dition on an indigent's right to appeal. That this condition does not become effective until after the conviction is affirmed does not distinguish it from the discriminatory conditions already stricken by the Supreme Court. The condition is discriminatory: that is all that is required in this genre of cases to establish a Fourteenth Amedment violation. Rinaldi's poverty obliged him to invoke the N.J.S. 2A:152-17 procedure in order to exercise his right to a full appellate review. The action of the State in now withholding his wages penalizes him simply because he is poor—this must be characterized as constitutionally discriminatory. Footnote 1. The successful indigent appellant can be favored even over the successful non-indigent appellant who pays for the transcript himself. The Appellate Division is free *not* to tax the State the cost of the non-indigent's transcript after a reversal of a conviction. R.R. 1:9-2 (1); 2:9-2."

The brief goes on to stress that "In effect then, the fruits of his (plaintiff's) labor for the next several years do not belong to him." And while it argues under the Thirteenth Amendment it states substantially plaintiff's main complaint under the Eighth Amendment i.e. "To take all of plaintiff's wages to pay a bill which he is not legally obliged to pay, and to keep him at work against his will and over his protests against this 'wage assignment' violates the letter and spirit of this Amendment." The brief concludes by urging that the fact that other inmates have not been obliged to reimburse Essex

County for transcripts furnished "amounts to the clearest type of discrimination" against Rinaldi. The latter in [fol. 74] his complaint cites this as an offense against him in violation of the Eighth Amendment.

Both the defense briefs argue against the Eighth Amendment alleged violations of the complaint. The state brief does this under one general heading that the New Jersey law does not violate the United States Constitution. The county brief categorically answers plaintiff's Eighth Amendment charges in Point III titled "New Jersey Statutes 2A:152-17 and 2A:152-18", concluding that they "* * * do not amount to 'cruel and unusual punishment' to the plaintiff in violation of the Eighth Amendment to the Constitution of the United States." It submits that reimbursement is not punishment at all but "* * * merely a reasonable condition imposed by the legislature to defray the costs involved to the county treasurer by a defendant choosing voluntarily to seek further relief after a conviction."

Counsel for plaintiff at oral argument of plaintiff's motion for summary judgment stated that "* * * this is a motion for summary judgment on behalf of Joseph Rinaldi against Howard Yeager, as the Warden * * *. The basis and fundamental facts have been agreed upon and have been submitted to the court prior to today in a stipulation of facts." The primary proposition presented on behalf of appellant was the fact that after appeal or appeals if the decision or decisions were finally against appellant and if he were still in prison his prison earnings could be applied against the cost of the trial and hearing transcripts furnished him. Fundamentally it was urged that the governing state law "creates an inhibition, however slight, to the institution of an appeal." Counsel stated, "* * * that this statute is not applied across the board, that there are instances which we cite [fol. 75] by name of prisoners where this statute is not applied; and we say that if a statute is unconstitutional on its face or is applied in unconstitutional fashion, we are entitled to the relief we seek." Counsel further stated: "I might say this for the record: I recognize that this is a motion for summary judgment and I should

not be discussing facts but I make this statement for the record: that certain facts that are stated in the brief submitted by the County we would controvert were we to feel that facts were important at this hearing. The fact specifically that we would controvert is that the man is being given toothpaste and razor blades and the like while he is in prison." He took the position that the items named can only be had by plaintiff out of his twenty cents a day. The only other matter suggested was that whatever the underlying reason for compensating prisoners for their work, "* * * it should be permitted to stand and not be absorbed by this kind of a proceeding which I don't think dignifies the statute, the position of the State of New Jersey or Essex County." After argument on behalf of the defendants, counsel for plaintiff replied. He did not offer any new matter. Earlier he had said, "In over-simplifying, perhaps, the factual statement I don't think I have omitted anything material."

This brings us to our opinion in the case, 238 F.Supp. 960, filed February 18, 1965. On p. 961, we noted that:

> "On February 10, 1964 plaintiff filed this suit. In it he alleges that because his institutional wages are being withheld from him and turned over to the Essex County Treasurer to help pay for the trial transcript furnished him on his second appeal, he is being subjected to cruel and unusual punishment, he is being deprived of due process of law, discriminated against and denied equal protection of the law, all in violation of his Federal Constitutional rights."

[fol. 76] In the opinion we examined at length the reimbursement which is the sole reason for this suit. Under the admitted facts we held (p. 962) that Rinaldi on his appeals was given "equal justice", "due process in letter and spirit", "the same protection available to the 'rich' and the 'powerful' ". With reference to the reimbursement element we said pp. 962, 963:

> "There is no mystery about the reimbursement phase before us. As we have said, this only comes into being after appellant has pursued his appeal to its finality, has been unsuccessful and is still in

confinement. In those circumstances the county becomes entitled to reimbursement from his institutional earnings. Obviously the reimbursement is within his means. It is from the sum the prisoner receives that reimbursement is to be had. The statute leaves the County a wide discretion regarding the amount it deducts from the prisoner's income. There is no proof before us whether prisoners are allowed extra items, such as smoking material, free or if the ordinary means of obtaining these is with their work pay. Whatever the situation we are entirely satisfied that the statutory provision for reimbursement is no violation per se of plaintiff's Federal Constitutional rights. The administration of the method and rate of reimbursement is rightly delegated to the reasonable discretion of the County Prison Authorities. There is no Federal cause of action made out here on the theory advanced. Plaintiff is definitely able to make installment payments for his transcript. This may inconvenience him. To perhaps numerous litigants in criminal actions on the outside paying for their transcripts may be just as inconvenient and more so. We do not see that this problem of paying within his means for his important trial record is inflicting hardship upon Rinaldi. Indeed, paying what he can towards the cost of something that was most necessary to him should be helpful to him retaining or reestablishing his self respect. In common fairness he should pay what he can. If for some good reason the entire amount of his pay is too much he can request an adjustment from the Prison Authority. The reimbursement of course has no bearing whatsoever on his sentence."

Respecting the allegation that non enforcement of reimbursement for transcripts from other prisoners was part of the cruel and unusual punishment inflicted upon Rinaldi we said p. 963:

[fol. 77] "Generally speaking, the question involved is New Jersey State and County business. Objection, if any, to the manner in which the statute is ad-

ministered can be made through the proper New Jersey facilities. Even as to this it is difficult to see any discrimination against the plaintiff. His reimbursement has been handled in accordance with the statute. Assuming that on occasion reimbursement has not been insisted upon because of laxness or favoritism and there is no evidence of this before us, plaintiff is not being harmed, he is merely making reimbursement for his transcript in accordance with the law of New Jersey. His reimbursement is not increased one penny because of what may happen in other reimbursement circumstances."

It is self-evident from the above that all of plaintiff's allegations which he based on the Eighth Amendment were fully before this court on his motion for summary judgment, were carefully considered and just as carefully decided. There is one factual situation which is in dispute between the parties. That is whether plaintiff is given smoking material, shaving blades, toilet articles and the like by the prison authorities or must pay for them. This was covered in detail in our opinion as appears above in the second quote therefrom. The second point which may not be disputed or at least not entirely, was also disposed of in our opinion (last opinion quote above). Definitely, there is no conflict between the parties as to facts which in any way touch our decision. We might call attention in passing to the absence of assertion by plaintiff that gifts to him from the outside, if any, are at all affected by the reimbursement procedure. Among the numerous opinions supporting our holding that the administration of the New Jersey reimbursement statute in this instance is proper New Jersey state and county business, see Gurezynski v. Yeager, 339 F.2d 884 (3 Cir. 1964); United States ex rel Morris v. Radio Station W E N R, 209 F.2d 105 (2 Cir. [fol. 78] 1953); Stroud v. Swope, 187 F.2d 850, 851 (9 Cir. 1960).

We have again exhaustively considered this whole case so that there be no possible doubt regarding all problems of substance factually and legally connected with it and their rightful solution. We are satisfied that plaintiff's

attorney explored and developed every facet of plaintiff's claims and presented them to this court in clear, forceful, lawyerlike fashion.

The motion to "correct" the judgment in this suit will be denied.

[fol. 79]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-66

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

ORDER ON MOTION TO CORRECT JUDGMENT—
May 17, 1965

In accordance with the opinion of the court entered in the above motion to correct judgment in this case today, it is on this 17th day of May, 1965 ORDERED that plaintiff's said motion to correct judgment be and it is hereby denied.

/s/ Gerald McLaughlin
Circuit Judge

/s/ Thomas F. Meaney
District Judge

/s/ Robert Shaw
District Judge

[fol. 80]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

vs.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 11, 1965

I. Notice is hereby given that Joseph A. Rinaldi, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the Order entered in this action on May 17, 1965, denying plaintiff's motion to correct the judgment previously entered, and from the Order entered in this action on February 18, 1965, denying plaintiff's motion for summary judgment and an injunction and granting summary judgment in favor of the defendants and against the plaintiff.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The Clerk will please prepare a transcript of the Record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint
2. Answer of Defendants Yeager and Dempsky.
3. Answer of Defendant Lerner.

[fol. 81] 4. Interrogatories Propounded by Defendants Yeager and Dempsky and Answers thereto.

5. Interrogatories Propounded by Plaintiff to Defendants Yeager and Dempsky and Answers thereto.

6. Interrogatories Propounded by Plaintiff to Defendant Lerner and Answers thereto.

7. Plaintiff's Notice of Motion for Summary Judgment.
8. Affidavit of Joseph A. Rinaldi in Support of Motion for Summary Judgment.
9. Plaintiff's Request to Defendants Yeager and Dempsky for Admission of Facts.
10. Answers of Defendants Yeager and Dempsky to those Requests for Admission of Facts.
11. Plaintiff's Request to Defendant Lerner for Admission of Facts.
12. Answers of Defendant Lerner to those Requests for Admission of Facts.
13. Stipulation of Facts.
14. Order of February 18, 1965.
15. Opinion of Court of February 18, 1965.
16. Plaintiff's Notice of Motion to Correct Judgment and Affidavit Annexed thereto.
17. Order of May 17, 1965.
18. Opinion of Court of May 17, 1965.

[fol. 82] III. The following questions are presented by this appeal:

1. Did the Court err: (a) in failing to declare that the State's enforcement of N.J.S. 2A:152-18, which permits the State to be reimbursed for the cost of the trial transcript from the institutional earnings of a person convicted of a crime, was unconstitutional as violative of the plaintiff's rights under the Eighth, Thirteenth, and Fourteenth Amendments; and (b) in failing to enjoin the enforcement of that Statute?

2. Did the Court err in failing to order that all plaintiff's institutional wages withheld under the authority of N.J.S. 2A:152-18 be returned to him, that there be no further reimbursement taken from his wages, and that the transcript in question be returned to him?

3. Did the Court err in failing to set aside the Summary Judgment entered on behalf of defendants on the ground that there was a substantial controversy as to a material fact, i.e., whether the applica-

[fol. 83] tion of N.J.S. 2A:152-18 subjects the plaintiff to the infliction of cruel and unusual punishment in violation of the Eighth Amendment?

/s/ Donald A. Robinson
Attorney for Plaintiff
570 Broad Street
Newark, New Jersey

[fol. 84]

[Proof of Service (Omitted in Printing)]

[fols. 85-86]

[Clerk's Certificate to Foregoing Transcript Omitted in Printing]

[fol. 87]

SUPREME COURT OF THE UNITED STATES

No. 537 Misc., October Term, 1965

JOSEPH A. RINALDI, APPELLANT

v.

HOWARD YEAGER, WARDEN

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—January 24, 1966

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

[fol. 88]

SUPREME COURT OF THE UNITED STATES

No. 537 Misc., October Term, 1965

JOSEPH A. RINALDI, APPELLANT

v.

HOWARD YEAGER, WARDEN

APPEAL from the United States District Court for the District of New Jersey.

ORDER NOTING PROBABLE JURISDICTION—January 24, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 940 and placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 207855 602